



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R1–ES–2019–N072; FXES11140100000–190–FF01E00000]**

**Proposed Amendment and Transfer of Enhancement of Survival Permits Developed in Accordance with the Template Safe Harbor Agreement for the Columbia Basin Pygmy Rabbit, Douglas and Grant Counties, Washington**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the receipt of an application for an amendment of an enhancement of survival permit (permit) and an application for transferring a permit pursuant to the Endangered Species Act. The applications were developed in accordance with the Template Safe Harbor Agreement (Template SHA) for the Columbia Basin pygmy rabbit. The Washington Department of Natural Resources is requesting a permit amendment to add 3,628 acres of lands in Douglas and Grant Counties, Washington, to their site plan enrolled under the Template SHA. The proposed permit transfer was requested by Mr. Jim Myers following his purchase of 1,320 acres of land in Grant County, Washington, enrolled under the Template SHA. The amendment and transfer of these permits would authorize incidental take that is above the baseline conditions of the properties enrolled under the Template SHA and that may result from the permittees' otherwise lawful management activities. The Service requests comments from the public regarding the proposed amendment and transfer of these permits.

**DATES:** To be fully considered, written comments from interested parties must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods:

- *Internet:* You may view or download copies of the Template SHA and draft environmental assessment and obtain additional information on the Internet at <http://www.fws.gov/wafwo/>.
- *Email:* wfwocomments@fws.gov. Include “Template SHA for the Columbia Basin pygmy rabbit” in the subject line of the message.
- *U.S. Mail:* Public Comments Processing, Attn: FWS–R1–ES–2019–N072; U.S. Fish and Wildlife Service; c/o Russ MacRae; Eastern Washington Fish and Wildlife Field Office; 11103 E. Montgomery Drive, Spokane Valley, WA 99206.
- *In-Person Drop-off, Viewing, or Pickup:* Call 509–891–6839 ext. 8001 to make an appointment (necessary for viewing or picking up documents only) during regular business hours at the above address. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

**FOR FURTHER INFORMATION CONTACT:** Russ MacRae, Field Supervisor, Eastern Washington Fish and Wildlife Field Office (see **ADDRESSES**); 509–891–6839 ext. 8001 (telephone). If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Service has received an application for an amendment of an enhancement of survival permit (permit) and an application for transferring a permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). These permits authorize otherwise prohibited take of an endangered species. The applications were developed in accordance with the Template Safe Harbor Agreement (Template SHA) for the Columbia Basin pygmy rabbit (CBPR, *Brachylagus idahoensis*). The Washington Department of Natural Resources (WDNR) is requesting a permit amendment to add 3,628 acres of WDNR lands in Douglas and Grant Counties, Washington, to their site plan enrolled under the Template SHA. The proposed permit transfer was requested by Mr. Jim Myers following his purchase of 1,320 acres of land from ABS Farms LLC in Grant County, Washington, enrolled under the Template SHA.

The CBPR is currently listed under the ESA as endangered on the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h). Consequently, take of this species is prohibited by section 9 of the Act. The amended and transferred permits would authorize take that is above the baseline conditions of the properties enrolled under the Template SHA and that may result from the permittees' otherwise lawful management activities. The Service requests comments from the public regarding the proposed amendment and transfer of these permits.

### **Background**

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to

attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm,” as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in our regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Under specified circumstances, however, we may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered species are at 50 CFR 17.22.

Under a Safe Harbor Agreement (SHA), participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. SHAs, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation efforts for listed species. The SHAs provide assurances to property owners that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through SHAs are found in 50 CFR 17.22(c). As provided for in the Service’s final Safe Harbor Policy (64 FR 32717; June 17, 1999), SHAs provide assurances that allow the property owner to alter or modify their enrolled

property, even if such alteration or modification results in the incidental take of a listed species, to such an extent that the property is returned back to the originally agreed upon baseline conditions.

On September 7, 2006, the Service announced the availability for public review and comment of a draft Template SHA, which was jointly developed by the Service and the Washington Department of Fish and Wildlife (WDFW), and a draft environmental assessment (EA), which was developed by the Service pursuant to Federal responsibilities under the National Environmental Policy Act (71 FR 52816). The Service's September 7, 2006, *Federal Register* notice also announced the receipt of three initial permit applications that were developed in accordance with the Template SHA. The final Template SHA, which contained only minor modifications from the draft released for public review, was signed by the Service and WDFW on October 24, 2006. On April 25, 2007, the Service announced the availability for public review and comment of another 13 permit applications that were developed in accordance with the Template SHA (72 FR 20557). To date, the Service has issued 16 permits under the Template SHA, which cover 109,425 acres that are within the historic distribution of the CBPR.

The primary objective of the Template SHA is to facilitate collaboration between the Service, WDFW, and prospective participants to voluntarily implement conservation measures to benefit the CBPR. Another objective of the Template SHA is to facilitate the processing of enhancement of survival permits that will provide incidental take coverage for participants to relieve them of additional section 9 liability under the ESA if implementation of their conservation measures results in increased numbers or distribution of CBPRs on their enrolled properties.

## **Proposed Action**

We received applications from the WDNR for an amendment of a permit, and from Mr. Jim Myers requesting the transfer of a permit under the ESA and in accordance with the Template SHA and 50 CFR 13.25(b). If we approve the applications, the implementation of the Template SHA would occur on the following properties:

- WDNR: The proposed permit amendment would add an additional 3,628 acres of WDNR lands to the 29,346 acres of their land currently enrolled under the Template SHA. This addition would result in a cumulative total of 32,974 acres of WDNR-owned land in Douglas and Grant Counties, Washington, that are located within the geographic area covered by the existing Template SHA. All of the area proposed for enrollment by WDNR represents intervening properties (i.e., property outside of CBPR recovery emphasis areas) as defined in the Template SHA. WDNR and WDFW biologists conducted evidence searches for CBPRs on all properties identified by the WDNR for enrollment under the Template SHA. No CBPRs or evidence of active pygmy rabbit burrows were detected during these surveys. Therefore, in accordance with the provisions of the Template SHA, the baseline for properties covered by WDNR's site plan, including the additional acres, is zero active pygmy rabbit burrows.

- Mr. Jim Myers: The properties included within the proposed permit transfer total 1,320 acres in Grant County, Washington, and are located within the geographic area covered by the Template SHA. Ms. Mary Bolyard of ABS Farms LLC sold the property to Mr. Jim Myers, and his permit application requests the transfer of the permit from ABS Farms LLC. All of the area proposed for enrollment by Mr. Myers represent

intervening properties (i.e., property outside of CBPR recovery emphasis areas) as defined in the Template SHA. WDFW biologists conducted evidence searches for CBPR on all ABS Farms LLC properties identified for enrollment under the Template SHA. No CBPRs or evidence of active pygmy rabbit burrows were detected during these surveys. Therefore, in accordance with the provisions of the Template SHA, the baseline for properties covered by the site plan is zero active pygmy rabbit burrows.

The Service has previously determined that implementation of the Template SHA will result in conservation benefits to the CBPR and will not result in significant effects to the human environment. The Service will evaluate the permit applications, related documents, and any comments submitted to determine whether the applications are consistent with the measures prescribed by the Template SHA and comply with relevant statutory and regulatory requirements. If it is determined that the requirements are met, a permit authorizing incidental take of the CBPR will be issued to the applicants. The final determinations for each permit will not be completed until after the end of the 30-day comment period, and we will fully consider all comments received.

### **Public Comments**

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action. The original Template SHA and EA are available for reference.

### **Public Availability of Comments**

All comments and materials we receive become part of the public record

associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation, will be available for public inspection by appointment, during normal business hours, at our Eastern Washington Fish and Wildlife Field Office (see **ADDRESSES**).

#### **Authority**

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22, and 40 CFR 1506.6, respectively).

**Robyn Thorson,**

*Regional Director, Pacific Region,*

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